

REMARKS

Applicants' undersigned attorney thanks the Examiner for her comments. In response to the Examiner's remarks that the features upon which Applicants rely (i.e., an upper layer having an entire bottom surface area that is greater than an entire surface area of a top surface of a lower layer) are not recited in the rejected claim(s), Applicants would like to point out to the Examiner that independent Claim 26 does, in fact, specifically recite "surface area."

Additionally, the Examiner has cited a reference (Osborn, III) that has not been formally cited on either Form PTO-1449 or Form PTO-892. Applicants respectfully request the Examiner to cite this reference on a Form PTO-892 in order to ensure that this reference is cited on the face of any patent issuing from the subject patent application.

Applicants respectfully request reconsideration of this patent application, particularly in view of the above Amendment and the following remarks. Currently, Claims 1, 2, 4, 6, 9-12, 14-20, 26-33, 35-43, 57, 58, 60-63, 65, 68-70, and 72-77 are pending, with Claims 1, 2, 4, 6, 9-12, 14-20, 27-33, and 35-42 withdrawn from consideration.

Amendment to the Specification

The specification has been amended to include a citation to Figure 3 in the paragraph (page 13, lines 11-15) describing the discontinuity of the lower layer 24. No new matter has been added by this Amendment.

Drawing Objections

The Examiner has objected to the drawings for failing to show every feature of the invention specified in the claims. Applicants have amended Fig. 3 to show the lower layer 24 as being discontinuous in the form of a plurality of separate pieces, as described at page 13, lines 11-15. No new matter has been added by this Amendment.

Notice of References Cited

Applicants note that the Examiner has cited U.S. Patent No. 5,484,430 issued to Osborn, III, in a rejection under 35 U.S.C. §103(a). However, this reference does not appear to have been cited in any Information Disclosure Statements filed by Applicants nor in any Notices of References Cited by the Examiner. Therefore, Applicants respectfully request a Notice of References Cited (Form PTO-892) citing this reference to ensure that this reference appears on the face of any patents issuing from the present application.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 26, 57-58, 60-63, and 68 under 35 U.S.C. §102(b) as being anticipated by Everett et al. (PCT Publication No. WO 99/17695, hereinafter “Everett”) is respectfully traversed, particularly in view of the above Amendment and the following remarks.

Everett discloses a multi-layer absorbent core. Everett does not disclose each and every element or limitation of Applicants’ independent Claim 26.

Applicants’ invention as recited in independent Claim 26 requires the upper layer to have a surface area greater than a surface area of the lower layer. Claim 26 was previously amended to clarify that these surface areas refer to the *entire* surfaces of the respective layers.

More particularly, Applicants define the surface area relative to the claims by first defining the bottom surface of the upper layer and the top surface of the lower layer. As recited in Claim 26, the bottom surface encompasses an *entire surface* of the upper layer that faces the lower layer, and the top surface encompasses an *entire surface* of the lower layer that faces the bottom surface of the upper layer. Having defined the surface area relative to the claims, Claim 26 further recites the limitation of **the surface area of the bottom surface of the upper layer being greater than the surface area of the top surface of the lower layer.**

Since Applicants have defined the relevant surfaces in their entirety, it is not only inappropriate, but also completely inaccurate, for the Examiner to consider “any portion of the bottom surface of the upper layer as a surface area, which can be

larger than any portion of the top surface of the lower layer,” as indicated by the Examiner. Applicants agree with the Examiner’s previous statement on page 8 of the Office Action mailed 01 December 2004: **“Everett does not disclose the upper layer has a bottom surface area greater than a surface area of the top surface of the lower layer.”**

In accordance with the Examiner’s earlier statement, Applicants concur that Everett fails to disclose an upper layer having an entire bottom surface area that is greater than an entire surface area of a top surface of a lower layer. Instead, Everett discloses that the upper layer is either the same size or *smaller* than the lower layer.

For at least the reasons presented above, Applicants respectfully submit that Claim 26 is not anticipated by Everett. Because Claims 57-58, 60-63, and 68 depend from Claim 26, these claims are also not anticipated by Everett. Thus, Applicants respectfully request withdrawal of this rejection.

Claim Rejections - 35 U.S.C. §103

The rejection of Claims 43, 65, 69-70, and 72-77 under 35 U.S.C. §103(a) as being unpatentable over Everett in view of Osborn, III (presumably U.S. Patent No. 5,484,430) is respectfully traversed.

Osborn, III, discloses a sanitary napkin having a discontinuous absorbent core that includes a plurality of separate pieces. There is no suggestion or motivation to modify or combine the inventions of Everett and/or Osborn, III, to achieve an absorbent garment that includes an absorbent assembly having a drum-formed upper layer and an air-laid lower layer, both layers having equal density, wherein the lower layer includes a plurality of separate pieces placed in desired locations of the absorbent assembly.

Everett fails to disclose any discontinuous layers. Osborn, III, discloses a single discontinuous layer, which provides the benefit of independent, unconstrained movement by each segment in the Z-direction. However, the discontinuous lower layer in Applicants’ claimed invention is provided in combination with an upper layer in an absorbent assembly. Thus, the upper layer may

certainly inhibit the movement of each lower layer segment in the Z-direction. Therefore, the benefits in Osborn, III, do not apply to Applicants' claimed invention.

More particularly, the entire absorbent layer in Osborn, III, is discontinuous. In contrast, none of the layers in Everett are discontinuous. A combination of these references, motivated to modify the Everett absorbent structure based on the benefits taught in Osborn, III, would result in a discontinuous absorbent structure in which both layers 48 and 50 are discontinuous. There is no suggestion in motivation in either of the references, alone or in combination, to produce an absorbent structure in which one layer is discontinuous and the other layer is not.


For at least the reasons given above, Applicants respectfully submit that the teachings of Everett in view of Osborn, III, fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,


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Attachment

Amendments to the Drawings

The attached sheet of drawings includes a change in Fig. 3. This sheet, which includes Figs. 1-3, replaces the original sheet including Figs. 1-3. In Fig. 3, the lower layer 24 is now illustrated as being discontinuous in the form of a plurality of separate pieces.

Attachment: Replacement Sheet